

Mr. Randy Zunke
February 1, 2008
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2. An HCP with an FCC Form 465 that had been posted by THN responded to a potential bidder by stating that it was "currently under contract till the end of 2007 with *Texas Healthcare Network*" (emphasis added.)¹⁷
3. In the spring of 2006, at least two potential bidders attempted to contact the mailing contact and in some cases the physical location contact of hospitals in the Network. A few of the hospitals communicated with the potential bidders, but upon reviewing the bids informed the bidders that they were currently receiving service through THN at a lower rate, and would continue to receive their service through THN.¹⁸ Most physical location contacts referred potential competitive bidders to Mr. Zunke, the contact listed on FCC Form 465.¹⁹

Conclusion

Because of Mr. Zunke's relationship as President of Hospital Networks Management, the consultant to the HCP and Mr. Zunke's relationship as President of Texas Healthcare Network, which holds itself out to the member hospitals and the general public as a service provider, there is a conflict of interest in violation of the FCC's *Mastermind Order* and its competitive bidding requirements.²⁰

As a result, funding previously committed for HCPs filing under the umbrella of Texas HealthCare Network must be retracted. Attached is a spreadsheet²¹ that details the Funding Year, HCP Number, Funding Request Number, and funding amount for which USAC is issuing a Commitment Adjustment and Demand.²² Also attached is a listing of the Funding Year, HCP Number, Funding Request Number, and funding amount for which USAC is hereby rescinding funding.²³

¹⁷ Competitive bid complaint #1, email communication string between service provider and HCP physical location, forwarded to USAC July 25, 2007.

¹⁸ Competitive bid complaint #1, email communication containing notes on all contacts for consortium of hospitals in Texas, email provided to USAC July 25, 2007.

¹⁹ See December 10th Decision pp. 9-11 for detailed explanation regarding relationship between THN as a service provider and the health care providers who are members of THN.

²⁰ See 47 C.F.R. § 54.603.

²¹ See Attachment A for full listing. USAC has already issued payment to the service provider for all Funding Requests that are issued a Commitment Adjustment and Demand via this letter.

²² See Attachment B for standard Commitment Adjustment and Demand language.

²³ See Attachment C for a full listing. USAC has not issued payment to the service provider for all Funding Requests that are denied via this letter.

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The mailing contacts and the HCP physical location contacts on file with USAC based on the Funding Year 2007, or most recent Form 465, will receive a copy of this letter.²⁴ A copy of this letter was also sent to the applicable service provider(s).

If you wish to file an appeal of this decision, your appeal must be *received* no later than 60 days after the date of this letter. Appeals must be filed in conformance with the requirements of 47 C.F.R. §§ 54.719 and 54.720. Detailed instructions for filing appeals are available at:

<http://www.usac.org/rhc/about/filing-appeals.aspx>.

Sincerely,

USAC

²⁴ See Attachment D for a full listing.

ATTACHMENT B

USAC

Universal Service Administrative Company

100 South Jefferson Road
Whippany, NJ 07981

Rural Health Care Division

www.rhc.universalservice.org
Phone: 1-800-229-5478

COMMITMENT ADJUSTMENT LETTER

FEBRUARY 1, 2008

XX
XX
XX
XX

RE:	Commitment Adjustment
Funding Year:	SEE ATTACHMENT A OF FEB 1, 2008 LETTER
Applicant:	SEE ATTACHMENT A OF FEB 1, 2008 LETTER
HCP Contact Person:	SEE ATTACHMENT A OF FEB 1, 2008 LETTER
HCP Contact Phone:	SEE ATTACHMENT A OF FEB 1, 2008 LETTER

Dear **:

Our routine review of Universal Service Administrative Company (USAC) Rural Health Care Division (RHCD) Program funding commitments revealed certain applications where funds were committed in violation of program rules. In order to be sure that no funds are used in violation of program rules, RHCD must now adjust these funding commitments. This letter is to inform you of these adjustments.

FUNDING COMMITMENT REPORT

On the page following this letter, we have provided a Funding Commitment Report for the application cited above. The enclosed report includes a list of the Funding Request Number(s) (FRNs) from the application for which adjustment(s) are necessary. RHCD is also sending this information to the applicant, so you may work with them to implement this decision. Immediately following the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. This amount is shown as Funds to be Recovered. We will soon send a letter describing the process for recovering these funds, and will send a copy of the letter to the applicant. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. To remit payments, please review the payment addresses below.

The physical address for wire transfers is:

LaSalle Bank N.A.
540 W Madison St., 4th Floor
Chicago, IL 60661

The ABA Routing Number for ACH and wire payments is 07100505, DDA is 5590045653.

For courier, overnight packages (FedEx, UPS, etc.), and checks via postal service the address is

USAC
1259 Paysphere Circle
Chicago, IL 60674

ATTACHMENT B

Funding Commitment Report
XXXXXXXXXXXXXX

Funding Request Number(s): SEE ATTACHMENT A TO FEB 1 2008 LETTER
SPIN: SEE ATTACHMENT A TO FEB 1 2008 LETTER
Service Provider Name: SEE ATTACHMENT A TO FEB 1 2008 LETTER
Services Ordered: SEE ATTACHMENT A TO FEB 1 2008 LETTER
Billing Account Number: SEE ATTACHMENT A TO FEB 1 2008 LETTER

Adjusted Funding Commitment: ATTACHMENT
A
Funds Disbursed to Date: ATTACHMENT
A
Funds to be Recovered: ATTACHMENT
A

Funding Commitment Adjustment Explanation:

PLEASE REFER TO THE FEBRUARY 1, 2008 LETTER TO TEXAS HEALTHCARE NETWORK AND SPECIFICALLY ATTACHMENT A TO THE LETTER LISTING ALL HCP'S, SPINS, FRN'S AND AMOUNTS TO BE RECOVERED BY COMAD.

PLEASE SEND A COPY OF THIS PAGE WITH YOUR
CHECK TO ENSURE TIMELY PROCESSING

ATTACHMENT B

TO APPEAL THESE FUNDING COMMITMENT ADJUSTMENTS

If you wish to appeal this decision, you may file an appeal with the Universal Service Administrative Company, or directly to the Federal Communications Commission. The appeal must be filed within 60 days of the date at the top of this letter. Detailed instructions for filing appeals are available at:

<http://www.usac.org/rhc/about/filing-appeals.aspx>

If you have questions or need help, please call the Customer Service Support Center at 1-800-229-5476.

Sincerely,

USAC – RHCD

Attachments

CC: XXXXXXXXXXXX

ATTACHMENT B

A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter is a report for each support schedule for this HCP for which a commitment adjustment is required. Below are definitions for terms used in the report.

- ◆ **Funding Request Number (FRN):** A Funding Request Number is assigned by the RHCD to each Funding Commitment Letter. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 466/468.
- ◆ **SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in universal service support programs.
- ◆ **SERVICE PROVIDER:** The legal name of the service provider.
- ◆ **SERVICES ORDERED:** The type of telecommunications service ordered from the service provider, as shown on the Form 466/468.
- ◆ **BILLING ACCOUNT NUMBER:** The account number your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 466/468 or Form 467.
- ◆ **ADJUSTED FUNDING COMMITMENT:** This represents the adjusted total amount of funding that RHCD has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the RHCD will continue to process properly filed invoices up to the new commitment amount.
- ◆ **FUNDS DISBURSED TO DATE:** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- ◆ **FUNDS TO BE RECOVERED:** This represents the amount of Funds Disbursed to Date that exceeds the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- ◆ **FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This is a description of the reason the adjustment was made.

APPENDIX C

Christopher M. Miller
Regulatory Counsel



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Suite 500
Arlington, VA 22201

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Fax 703 351-3676
chris.m.miller@verizon.com

March 31, 2008

LETTER OF APPEAL

BY ELECTRONIC MAIL AND HAND DELIVERY

Universal Service Administrative Company
Attn: Rural Health Care Division, USAC
Attn: Rural Health Care Committee, Board of Directors, USAC
c/o Camelia Rogers
2000 L Street, NW, Suite 200
Washington, DC 20036

**RE: Appeal of Verizon – Texas Healthcare Network Commitment Adjustment
Letter dated February 1, 2008**

Dear Sir or Madam:

Pursuant to 47 C.F.R. § 54.719(a), Verizon appeals the Universal Service Administrative Company ("USAC") Rural Health Care Division's Commitment Adjustment Letter dated February 1, 2008 (the "Letter Decision," attached at Attachment A) and issued to MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon"). To the extent USAC seeks recovery of rural health care funds identified in the Letter Decision USAC is bound by Commission precedent to recover those funds from the funding applicant, not from Verizon. Even if not bound, the same principles from the Commission's orders that address recovery of revoked universal service funds should apply in this instance and USAC should recover directly from the applicant.

The Letter Decision was received by Verizon as an attachment to a February 1, 2008 funding revocation letter addressed to Texas Healthcare Network and/or Hospital Networks Management (collectively "the applicant"), one or both of which apparently is a consortium of Texas health care providers (the "Texas hospitals") and potentially also a service provider to the Texas hospitals. Verizon provides various services to the Texas hospitals, and some or all of those services are provided pursuant to bid(s) submitted by Verizon in response to FCC Form(s) 465 submitted by the applicant to the Rural Health Care Division (the "Division").

The Division's funding revocation letter indicates that certain rural health care funds in funding years 2001-2005 were revoked because of specified violations of the rural health care

Rural Health Care Appeal of Verizon

March 31, 2008

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program's competitive bidding rules in 47 C.F.R. § 54.603. Verizon does not have sufficient information to take a position on the alleged underlying competitive bidding rules violations, and to the extent the Letter Decision speaks to such alleged violations Verizon does not appeal those aspects of the Letter Decision.

Verizon understands from various correspondence and subsequent communication with USAC that the alleged competitive bidding rules violations relate only to the applicant and not to Verizon. Verizon further understands that the applicant has separately appealed the Division's funding revocation decision. Verizon also understands, however, that in the event the applicant's appeal of the Division's funding revocation decision is unsuccessful, USAC intends to or may seek recovery from Verizon – not from the applicant – of revoked rural health care funds dispersed by USAC in the funding years. Verizon appeals this aspect of the Letter Decision.

As required by 47 C.F.R § 54.611, the revoked rural health care funds awarded to the applicant were paid to Verizon as an off-set against Verizon's universal service contribution obligation and passed through to the applicant by Verizon on bills in the funding years. This is similar to the discounted billing process in the E-rate program for school and library applicants. 47 C.F.R. § 54.514; *see also Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, ¶ 51 (2003).

Even though rural health care funds are passed through service providers to applicants under the Commission's rules, the Commission has determined that in instances such as this where there is an alleged rules violation by an applicant, and not by a service provider (or in this case a contract provider to another service provider), USAC must seek recovery of revoked funds from the applicant.

[W]e conclude that recovery actions should be directed to the party or parties that committed the rule or statutory violation. . . . This revised recovery approach shall apply on a going forward basis to all matters for which USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency. *Federal-State Joint Board on Universal Service*, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, ¶ 10 (2004) ("*Order on Reconsideration*").

The *Order on Reconsideration* controls USAC's determination as to which party to seek recovery from in this instance. Even if not binding, the same guiding principles from the *Order on Reconsideration* apply to the present situation and direct USAC to recover from the applicant. The *Order on Reconsideration* was issued in response to multiple petitions for reconsideration of an earlier Commission decision holding that because service providers generally receive E-rate funding and then pass those amounts through to applicants, USAC should in all instances seek recovery of funds from service providers. *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 97-21 and 96-45, FCC 99-291, ¶ 8 (rel. Oct. 8, 1999) ("*Commitment Adjustment Order*").

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In modifying the *Commitment Adjustment Order*, the *Order on Reconsideration* sought to address this very situation – where an applicant is alleged to have violated the Commission’s competitive bidding rules and funding is subsequently revoked by USAC.

We direct USAC to make the determination, in the first instance, to whom recovery should be directed in individual cases. In determining to which party recovery should be directed, USAC shall consider which party was in a better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation. For instance, the school or library is likely to be the entity that commits an act or omission that violates our competitive bidding requirements. . . *Order on Reconsideration* ¶ 15.

While the *Order on Reconsideration* was issued in the context of E-rate funding recovery, the language used by the Commission is broad enough to cover identical situations in the rural health care program. The first sentence in paragraph 10 of the order, for example, indicates that “recovery actions should be directed to the party or parties that committed the rule or statutory violation” and is not qualified with language specific to E-rate. *Id.* ¶ 10. Similarly, the first two sentences of paragraph 15 of the Order direct USAC to determine “to whom recovery should be directed” based on which party (the applicant or the service provider) “was in a better position to prevent the statutory or rule violation” and also are not qualified with language specific to E-rate. *Id.* ¶ 15. In addition, the *Order on Reconsideration* speaks most directly to recovery disputes in the E-rate context only because the *Commitment Adjustment Order* was issued in response to USAC’s revocation of certain funding commitments made to school and/or library applicants – not because the Commission intended a different standard for rural health care funding adjustments.

The Commission’s most recent *Program Management Order* provides further guidance. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, 22 FCC Rcd 16372 (2007) (“*Program Management Order*”). In that decision the Commission concluded that it should streamline funding recovery across all universal service programs consistent with the well-established E-rate rules and standards.

[W]e sought comment on whether, consistent with the conclusions in the *Schools and Libraries Fifth Report and Order*, amounts disbursed from the high-cost, low-income, and rural health care support mechanisms in violation of the statute or Commission rule must be recovered in full. Waste, fraud, and abuse of the USF programs harm all program participants by reducing the amount of available funds. Consistent with our conclusion regarding the schools and libraries program, funds disbursed from the high-cost, low-income, and rural health care support mechanisms in violation of a Commission rule that implements the statute or a substantive program goal should be recovered. *Program Management Order* ¶ 30.

Rural Health Care Appeal of Verizon

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Moreover, the policy reasons underlying the Commission's decision to direct USAC to seek recovery from applicants where there is an alleged violation of the competitive bidding rules apply equally to the E-rate and rural health care programs. There is no justification for seeking recovery from a rural health care service provider when funds have already been disbursed by USAC and passed through to an applicant. The service provider's role is to submit a bid to provide services and to undertake the administrative task of seeking reimbursement for discounts received by the applicant. Assessing the service provider years after the fact for errors or violations that the applicant committed in seeking funds is not only unfair but will also discourage service providers from bidding on new rural health care provider requests. In many instances it would be difficult or impossible for the service provider to subsequently obtain reimbursement from the applicant, and, as a result, the service provider will suffer a loss through no fault of its own.

Unless the service provider is to blame for an erroneous disbursement, the service provider should not be required to indemnify USAC for rural health care funds that have already been disbursed to the applicant but later revoked. It is particularly inappropriate to seek repayment of funds from a service provider when there is evidence that the applicant engaged in waste, fraud, or abuse or committed a statutory violation. The applicant engaged in the wrongdoing is the entity responsible for compliance with the Commission's rules, not a service provider. The applicant is also in the best position to prevent fraud. Often the alleged rules violation occurs before a service provider is even selected by the applicant or in the course of the selection process. In either case and in almost every such situation the service provider has no way of even knowing about, much less preventing the violation.

Indeed, in the present situation Verizon had no control over the applicant's actions in seeking rural health care funds from USAC, and the alleged rules violations were unknown to Verizon until notified of the allegations by USAC. If the Division's funding revocation decision is upheld, Verizon will be as much the victim of wrongdoing as USAC. Verizon acted in good faith in submitting its bid(s) to the applicant and in providing the requested services to the Texas hospitals. Now, in addition to USAC's potential claim for reimbursement, if the Division's funding revocation decision is upheld Verizon must seek payment from the applicant for discounts already given on the applicant's bills but not credited to Verizon by USAC. To further require Verizon to indemnify USAC for rural health care funds already credited would add insult to injury.

Rural Health Care Appeal of Verizon

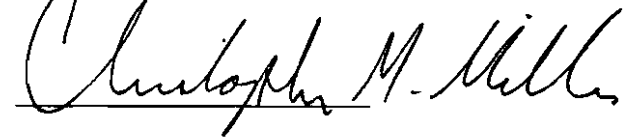
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For the foregoing reasons, Verizon requests that USAC reverse that aspect of the Letter Decision seeking recovery from Verizon of rural health care funds awarded to the applicant. Should you have any questions or require any additional information, please contact me.

Respectfully submitted,

By:



Michael E. Glover, *Of Counsel*

Karen Zacharia
Christopher M. Miller
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Arlington, VA 22201-2909
(703) 351-3071

Attorneys for Verizon

cc: David Copozzi

Rural Health Care Appeal of Verizon

March 31, 2008

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ATTACHMENT A

APPENDIX D

Christopher M. Miller
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April 16, 2008

LETTER OF APPEAL – SUPPLEMENTAL FILING

BY ELECTRONIC MAIL AND U.S. MAIL

Universal Service Administrative Company
Attn: Rural Health Care Division, USAC
Attn: Rural Health Care Committee, Board of Directors, USAC
c/o Camelia Rogers
2000 L Street, NW, Suite 200
Washington, DC 20036

**RE: Appeal of Verizon – Texas Healthcare Network Commitment Adjustment
Letter dated February 1, 2008**

Dear Ms. Rogers:

This is to clarify the above-captioned appeal and to supplement the record. On March 31, 2008 Verizon appealed the Universal Service Administrative Company ("USAC") Rural Health Care Division's Commitment Adjustment Letter dated February 1, 2008 (the "Letter Decision") and issued to MCI Communications Services, Inc. d/b/a Verizon Business Services. In the materials attendant to the Letter Decision USAC indicates that certain rural health care funds awarded to Texas Healthcare Network (the "applicant") in funding years 2001-2005 were revoked because of alleged violations of the rural health care program's competitive bidding rules. USAC also indicates that certain additional funding originally committed to the applicant but not yet credited to Verizon as the applicant's service provider was rescinded. The rescinded funding is identified as Attachment C with the materials attendant to the Letter Decision. All of these materials were included with Verizon's appeal.

To the extent the Letter Decision should be construed as a final decision by USAC not to credit the rescinded funding amounts to Verizon, Verizon also appeals that aspect of the Letter Decision. Consistent with the Commission's rural health care program billing procedures, in discounting bills to the applicant for services provided Verizon relied upon USAC's original funding commitment as assurance that Verizon would be reimbursed by USAC for the discounted portion of the services. For reasons more fully explained in Verizon's appeal, if the applicant is determined to have violated the Commission's competitive bidding rules through no fault of Verizon such that funding must be revoked or rescinded, Verizon should still be made

Rural Health Care Appeal of Verizon

April 16, 2008

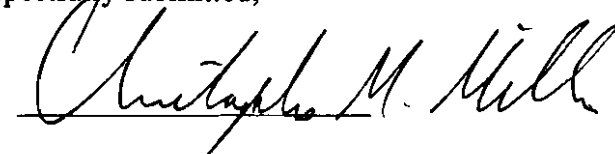
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whole, and USAC should seek recovery from the applicant. Attached hereto as Attachment A are the rescinded funding invoices for funding year 2005. The rescinded funding invoices for funding year 2006 were submitted on April 11, 2008 to USAC for crediting. In the event they are denied, Verizon will again supplement the record on appeal.

Should you have any questions or require any additional information, please contact me.

Respectfully submitted,

By:



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Attorneys for Verizon

cc: David Copozzi

Rural Health Care Appeal of Verizon

April 16, 2008

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ATTACHMENT A